

Appln No. 10/626,474
Amdt date June 29, 2005
Reply to Office action of May 9, 2005

REMARKS/ARGUMENTS

Claims 1-13 are pending in this application, of which claims 1 and 10 are independent. Claims 6 and 9 have been amended. Applicant respectfully submits that the amendments to claims 6 and 9 do not require a new search since they are for clarity purposes only and not for reasons of patentability. The amendments add no new matter and find full support in the application as originally filed. In view of the above amendments and following remarks, Applicant respectfully requests reconsideration and a timely indication of allowance.

Rejections Under 35 U.S.C. § 112, Second Paragraph

The Examiner has rejected claim 6 under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Specifically, the Examiner claims that "the scope of the claim is unclear."

Claim 6 has been amended for clarity to remove the positive recitation of "the pipe." Instead, the device of the claim is recited as being "capable of clampingly receiving" the pipe. Accordingly, Applicant respectfully requests that the rejection of claim 6 under 35 U.S.C. § 112, second paragraph, be withdrawn.

Rejections Under 35 U.S.C. § 102(b)

The Examiner has rejected claims 1 and 4-7 under 35 U.S.C. § 102(b) as allegedly being anticipated by Cole and Knudsen (U.S. Patent No. 332,383). Applicant respectfully traverses

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this rejection. Claim 1 is directed to "a piping clamp for locating a pipe relative to a concrete form, comprising: a base comprising: an upper portion, and a standoff portion having a lower surface for attachment to an upper surface of the concrete form; and a **spring clamp for engagement with a pipe in a clamping relationship.**" (Emphasis added.)

Cole and Knudsen discloses a lightning rod standard. The Examiner contends that the lightning rod standard, as shown in FIG. 3, includes "a spring clamp for engagement with a pipe in a clamping relationship." (Current Office action, page 2.) Applicant assumes that what the Examiner is referring to as the spring clamp is the "holder E" (i.e., that element which is labeled E in Fig. 1.)

Applicant respectfully submits that nowhere does Cole and Knudsen disclose, teach or suggest that its holder E comprises "spring arms" as specified in claim 1. Instead, the holder E includes a U-shaped open end through which a lightning rod (unlabeled) is disposed; and a throated opening, which holds the lightning rod by virtue of being smaller than the outer diameter of the lightning rod. Nowhere does Cole and Knudsen discuss that its holder E has a spring characteristic. Hence, the holder E cannot "engage a pipe in a clamping relationship," as is further specified by claim 1.

Applicant also respectfully submits that a material having spring characteristics sufficient to form "spring arms" and capable of being formed into the structure of "holder E" was not available at the time of filing of Cole and Knudsen (approximately, the year 1885.) Rather, it is more likely that a user would rely on the deformability of the multi-strand

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twisted lightning rod to pass the rod through the opening of the holder E and into its throated opening without deflection of the holder.

Consequently, Cole and Knudsen does not anticipate claim 1. Claims 4-7 depend from claim 1. Claim 1 is now believed to be in condition for allowance over Cole and Knudsen. As such, Applicant submits that claims 4-7 are also allowable over Cole and Knudsen as being dependent from an allowable base claim and for the additional limitations they contain therein. Accordingly, Applicant respectfully requests that the rejection of claims 1, 4-7 over Cole and Knudsen under 35 U.S.C. § 102(b) be withdrawn.

Rejections Under 35 U.S.C. § 103(a)

The Examiner has rejected claims 8 and 9 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Cole and Knudsen in view of Mathews (U.S. Patent No. 4,244,542). Applicant respectfully traverses this rejection. Claim 9 has been amended to depend from claim 4. Applicant respectfully submits that the dependency of claim 9 from claim 1 was a clear typographical error as it can be seen that the term "web portion" does not appear until claim 4. As such, Applicant could not have intended claim 9 to depend from claim 1.

Amended claims 8 and 9 depend from claims 1 and 4, respectively. Applicant respectfully submits that claim 1 is in condition for allowance, as is claim 4 which depends from claim 1. As such, claims 8 and 9 are also in condition for allowance as being dependent, directly or indirectly, from an allowable base claim and for the additional limitations they contain.

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For example, claims 8 and 9 each recite a recessed area in an upper surface of the spring clamp, with claim 9 more specifically reciting that the recessed area is in the web portion of the clamp. Applicant fails to see a teaching or illustration of a recess in the upper surface of the clamp of Mathews to which the Examiner refers. Further, Cole and Knudsen do not disclose such a recess. As such, Cole and Knudsen, and Mathews either alone or in combination, do not teach the recess claimed in either claim 8 or claim 9. Therefore, for this addition reason, Cole and Knudsen, together with Mathews, do not render claim 8 or claim 9 obvious. Accordingly, Applicant respectfully requests that the rejection of claims 8 and 9 over Cole and Knudsen, and Mathews, under 35 U.S.C. § 103(a) be withdrawn.

Allowable Subject Matter

The Office action states that "claims 2 and 3 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten to include all of the limitations of the base claim and any intervening claims." Although Applicant appreciates the recognition that claims 2 and 3 contain allowable subject matter, those claims are not amended herein because the claim from which they depend is itself in condition for allowance. Because claims 2 and 3 depend from claim 1, they are also allowable.

The Examiner states that "claims 10-13 are allowed." Claims 10-13 are not amended by the current response and thus remained in allowed form.

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In view of the above amendments and remarks, Applicant respectfully submits that claims 1-13 are in condition for allowance. A timely indication of allowance is therefore respectfully requested. If there are any remaining issues that can be addressed by telephone, Applicant invites the Examiner to contact the undersigned at the number indicated.

Respectfully submitted,

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